## MISSOURI COURT OF APPEALS WESTERN DISTRICT

HOMER HERGINS, JR.

APPELLANT,

v.

#### **DIVISION OF EMPLOYMENT SECURITY**

RESPONDENT.

# DOCKET NUMBER WD73190 MISSOURI COURT OF APPEALS WESTERN DISTRICT

DATE: March 6, 2012

Appeal From:

Labor and Industrial Relations Commission

Appellate Judges:

Division Three: Karen King Mitchell, P.J., James M. Smart, Jr., and Gary D. Witt, JJ.

Attorneys:

Homer Hergins, Jr., Appellant Pro Se, for appellant.

Larry Raymond Ruhmann, Jefferson City, MO, for respondent.

#### MISSOURI APPELLATE COURT OPINION SUMMARY

### MISSOURI COURT OF APPEALS WESTERN DISTRICT

HOMER HERGINS, JR.,

APPELLANT,

v.

#### DIVISION OF EMPLOYMENT SECURITY,

RESPONDENT.

No. WD73190

Labor and Industrial Relations Commission

Before Division Three: Karen King Mitchell, P.J., James M. Smart, Jr., and Gary D. Witt, JJ.

In July 2008, Homer Hergins, Jr., after having lost his job, filed a claim and began receiving unemployment benefits through the Missouri Division of Employment Security ("Division"). After exhausting his regular unemployment compensation in Missouri in April 2009, Hergins filed for extended benefits in Missouri under the Federal Emergency Unemployment Compensation Act of 2008 ("EUC") and began claiming EUC benefits from April 19, 2009 through July 18, 2009. After exhausting his extended benefits in Missouri, Hergins filed a claim for regular unemployment compensation in the State of Kansas.

Subsequently, the Division was contacted by the Kansas Department of Labor and informed that Hergins would have been eligible to receive regular unemployment benefits in Kansas during the same period of time (beginning in April 2009) that he was receiving EUC benefits in Missouri. A deputy with the Division determined that Hergins was not eligible to claim and receive EUC benefits in Missouri when, during the same time, he was eligible to claim and receive regular unemployment benefits in Kansas. The Division therefore determined that Hergins had been overpaid EUC benefits during the period of ineligibility.

Hergins filed an appeal with the Appeals Tribunal, which upheld the Division's determination. Hergins appealed to the Labor and Industrial Relations Commission ("Commission"). The Commission adopted and affirmed the decision of the Appeals Tribunal. Hergins appeals.

On appeal, Hergins argues that he should not be required to reimburse the Division for the amount of overpaid benefits because he complied with all of the requirements to receive unemployment compensation, and he did not act in bad faith, or willfully withhold information from the Division.

#### VACATED AND REMANDED.

**Division Three holds**: The Division and the Commission misapplied the law by failing to apply federal law to the Division's claim seeking repayment of federal EUC benefits. The case is remanded to the Commission to remand to the Division to apply the applicable federal law to the determination relating to repayment.

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